

SENATE BILL NO. 153

INTRODUCED BY M. MACDONALD

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF STRANGULATION OF A PARTNER OR FAMILY MEMBER; AMENDING SECTIONS 40-15-102, 40-4-219, 41-3-301, 44-4-311, 45-5-206, 45-5-209, 46-1-502, 46-6-311, 46-9-108, 46-9-302, 46-16-226, 46-18-219, AND 46-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Strangulation of a partner or family member.** (1) A person commits the offense of strangulation of a partner or family member if the person purposely or knowingly impedes the normal breathing or circulation of the blood of a partner or family member by:

- (a) applying pressure on the throat or neck of the partner or family member; or
- (b) blocking air flow to the nose and mouth of the partner or family member.

(2) ~~(A) A PERSON CONVICTED OF A FIRST OFFENSE OF STRANGULATION OF A PARTNER OR FAMILY MEMBER SHALL BE FINED AN AMOUNT NOT TO EXCEED \$50,000 OR BE IMPRISONED IN THE STATE PRISON FOR A TERM NOT TO EXCEED 5 YEARS, OR BOTH.~~

~~(B) A person convicted of strangulation of a partner or family member~~ A SECOND OR SUBSEQUENT OFFENSE UNDER THIS SECTION shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined an amount not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(3) A person convicted of strangulation of a partner or family member is required to pay for and complete a counseling assessment as required in 45-5-206(4).

(4) For the purposes of this section, "partner" and "family member" have the meanings provided in 45-5-206.

**Section 2.** Section 40-15-102, MCA, is amended to read:

**"40-15-102. Eligibility for order of protection.** (1) A person may file a petition for an order of protection if:

- (a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family

- 1 member as defined in 45-5-206; or
- 2 (b) the petitioner is a victim of one of the following offenses committed by a partner or family member:
- 3 (i) assault as defined in 45-5-201;
- 4 (ii) aggravated assault as defined in 45-5-202;
- 5 (iii) intimidation as defined in 45-5-203;
- 6 (iv) partner or family member assault as defined in 45-5-206;
- 7 (v) criminal endangerment as defined in 45-5-207;
- 8 (vi) negligent endangerment as defined in 45-5-208;
- 9 (vii) assault on a minor as defined in 45-5-212;
- 10 (viii) assault with a weapon as defined in 45-5-213;
- 11 (ix) strangulation of a partner or family member as defined in [section 1];
- 12 ~~(ix)~~(x) unlawful restraint as defined in 45-5-301;
- 13 ~~(x)~~(xi) kidnapping as defined in 45-5-302;
- 14 ~~(xi)~~(xii) aggravated kidnapping as defined in 45-5-303; or
- 15 ~~(xii)~~(xiii) arson as defined in 45-6-103.
- 16 (2) The following individuals are eligible to file a petition for an order of protection against the offender
- 17 regardless of the individual's relationship to the offender:
- 18 (a) a victim of assault as defined in 45-5-201, aggravated assault as defined in 45-5-202, assault on a
- 19 minor as defined in 45-5-212, stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as
- 20 defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503; or
- 21 (b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated
- 22 deliberate homicide as defined in 45-5-103.
- 23 (3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order
- 24 of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint
- 25 a guardian ad litem for a minor petitioner.
- 26 (4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules
- 27 of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the
- 28 respondent's age.
- 29 (5) A petitioner is eligible for an order of protection whether or not:
- 30 (a) the petitioner reports the abuse to law enforcement;

- 1 (b) charges are filed; or  
 2 (c) the petitioner participates in a criminal prosecution.  
 3 (6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive  
 4 incident and the petitioner's application for an order of protection is irrelevant."  
 5

6 **Section 3.** Section 40-4-219, MCA, is amended to read:

7 **"40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend a  
 8 prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown  
 9 to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and  
 10 that the amendment is necessary to serve the best interest of the child. In determining the child's best interest  
 11 under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

- 12 (a) the parents agree to the amendment;  
 13 (b) the child has been integrated into the family of the petitioner with consent of the parents;  
 14 (c) the child is 14 years of age or older and desires the amendment;  
 15 (d) one parent has willfully and consistently:  
 16 (i) refused to allow the child to have any contact with the other parent; or  
 17 (ii) attempted to frustrate or deny contact with the child by the other parent; or  
 18 (e) one parent has changed or intends to change the child's residence in a manner that significantly  
 19 affects the child's contact with the other parent.

20 (2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in  
 21 40-4-212.

22 (3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the  
 23 acts specified in subsection (1)(d) or (8).

24 (4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential  
 25 schedule for parental contact with the child and to apportion transportation costs between the parents.

26 (5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment  
 27 if the court finds that the amendment action is vexatious and constitutes harassment.

28 (6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent ~~pursuant to~~  
 29 ~~40-4-221~~.

30 (7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial

1 decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed  
2 amended parenting plan must be filed and served with the motion for amendment and with the response to the  
3 motion for amendment. Preference must be given to carrying out the parenting plan.

4 (8) (a) If a parent or other person residing in that parent's household has been convicted of any of the  
5 crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child  
6 pursuant to court order may file an objection to the current parenting order with the court. The parent or other  
7 person having rights to the child pursuant to court order shall give notice to the other parent of the objection as  
8 provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to respond.  
9 If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of that parent  
10 are suspended until further order of the court. If that parent responds and objects, a hearing must be held within  
11 30 days of the response.

12 (b) This subsection (8) applies to the following crimes:

13 (i) deliberate homicide, as described in 45-5-102;

14 (ii) mitigated deliberate homicide, as described in 45-5-103;

15 (iii) sexual assault, as described in 45-5-502;

16 (iv) sexual intercourse without consent, as described in 45-5-503;

17 (v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-8-218;

18 (vi) incest, as described in 45-5-507;

19 (vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

20 (viii) endangering the welfare of children, as described in 45-5-622;

21 (ix) partner or family member assault of the type described in 45-5-206(1)(a);

22 (x) sexual abuse of children, as described in 45-5-625; and

23 (xi) strangulation of a partner or family member, as described in [section 1].

24 (9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional  
25 abuse by one parent against the other parent or the child or when a parent has been convicted of a crime  
26 enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute  
27 resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting  
28 plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and  
29 court action.

30 (10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting

1 plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous  
2 parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after  
3 a parent returns from military service, the court may not consider a parent's absence due to that military service  
4 in its determination of the best interest of the child.

5 (b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent  
6 to a temporary or permanent modification of a parenting plan:

7 (i) for the duration of the military service; or

8 (ii) that continues past the end of the military service."  
9

10 **Section 4.** Section 41-3-301, MCA, is amended to read:

11 **"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department,  
12 a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger  
13 of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child  
14 is safe, the department may make a request for further assistance from the law enforcement agency or take  
15 appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other  
16 person having physical or legal custody of the child of the placement at the time the placement is made or as  
17 soon after placement as possible. Notification under this subsection must include the reason for removal,  
18 information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the  
19 parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent,  
20 guardian, or other person may have a support person present during any in-person meeting with the social worker  
21 concerning emergency protective services.

22 (2) If a social worker of the department, a peace officer, or the county attorney determines in an  
23 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or  
24 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided  
25 for in [section 1], against an adult member of the household or that the child needs protection as a result of the  
26 occurrence of partner or family member assault or strangulation of a partner or family member against an adult  
27 member of the household, the department shall take appropriate steps for the protection of the child, which may  
28 include:

29 (a) making reasonable efforts to protect the child and prevent the removal of the child from the parent  
30 or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family

1 member;

2 (b) making reasonable efforts to remove the person who allegedly committed the partner or family  
3 member assault or strangulation of a partner or family member from the child's residence if it is determined that  
4 the child or another family or household member is in danger of partner or family member assault or strangulation  
5 of a partner or family member; and

6 (c) providing services to help protect the child from being placed with or having unsupervised visitation  
7 with the person alleged to have committed partner or family member assault or strangulation of a partner or family  
8 member until the department determines that the alleged offender has met conditions considered necessary to  
9 protect the safety of the child.

10 (3) If the department determines that an adult member of the household is the victim of partner or family  
11 member assault or strangulation of a partner or family member, the department shall provide the adult victim with  
12 a referral to a domestic violence program.

13 (4) A child who has been removed from the child's home or any other place for the child's protection or  
14 care may not be placed in a jail.

15 (5) The department may locate and contact extended family members upon placement of a child in  
16 out-of-home care. The department may share information with extended family members for placement and case  
17 planning purposes.

18 (6) [Except as provided in 41-3-305,] if a child is removed from the child's home by the department, a  
19 child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to  
20 the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working  
21 days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding  
22 weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for  
23 the care of the child have been made by the parents or voluntary protective services are provided pursuant to  
24 41-3-302.

25 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must  
26 be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

27 (8) If the department determines that a petition for immediate protection and emergency protective  
28 services must be filed to protect the safety of the child, the social worker shall interview the parents of the child  
29 to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district  
30 court may immediately issue an order for immediate protection of the child.

1 (9) The department shall make the necessary arrangements for the child's well-being as are required  
2 prior to the court hearing. (Bracketed language in subsection (6) terminates June 30, 2017--sec. 7, Ch. 376, L.  
3 2015.)"

4

5 **Section 5.** Section 44-4-311, MCA, is amended to read:

6 **"44-4-311. Domestic violence intervention program.** (1) The Montana board of crime control shall use  
7 the money in the domestic violence intervention account established by 44-4-310 to fund a domestic violence  
8 intervention program to provide grants to communities for misdemeanor probation officers or compliance officers  
9 to monitor compliance with sentencing requirements for offenders convicted of the offense of partner or family  
10 member assault under 45-5-206, the offense of strangulation of a partner or family member under [section 1], or  
11 of a violation of an order of protection under 45-5-626.

12 (2) In administering the domestic violence intervention program, the Montana board of crime control  
13 shall:

- 14 (a) identify priorities for funding services, activities, and criteria for the receipt of program funds;  
15 (b) monitor the expenditure of funds by organizations receiving funds under this section;  
16 (c) evaluate the effectiveness of services and activities under this section; and  
17 (d) adopt rules necessary to implement 44-4-310 through 44-4-313."

18

19 **Section 6.** Section 45-5-206, MCA, is amended to read:

20 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of partner  
21 or family member assault if the person:

- 22 (a) purposely or knowingly causes bodily injury to a partner or family member;  
23 (b) negligently causes bodily injury to a partner or family member with a weapon; or  
24 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family  
25 member.

26 (2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the  
27 following definitions apply:

- 28 (a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family  
29 members of a household. These relationships include relationships created by adoption and remarriage, including  
30 stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless

1 of the ages of the parties and whether the parties reside in the same household.

2 (b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who  
3 have been or are currently in a dating or ongoing intimate relationship.

4 (3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less  
5 than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less  
6 than 24 hours for a first offense.

7 (ii) An offender convicted of a second offense under this section shall be fined not less than \$300 or more  
8 than \$1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

9 (iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as  
10 provided in 46-23-1005.

11 (iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined  
12 not less than \$500 and not more than \$50,000 and be imprisoned for a term not less than 30 days and not more  
13 than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county  
14 jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

15 (v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the  
16 minor's presence as a factor at the time of sentencing.

17 (b) For the purpose of determining the number of convictions under this section, a conviction means:

18 (i) a conviction, as defined in 45-2-101, under this section;

19 (ii) a conviction for domestic abuse under this section;

20 (iii) a conviction for a violation of a statute similar to this section in another state;

21 (iv) if the offender was a partner or family member of the victim, a conviction for aggravated assault under  
22 45-5-202 or assault with a weapon under 45-5-213;

23 (v) a conviction for strangulation of a partner or family member under [section 1];

24 ~~(v)~~(vi) a conviction in another state for an offense related to domestic violence between partners or family  
25 members, as those terms are defined in this section, regardless of what the offense is named or whether it is  
26 misdemeanor or felony, if the offense involves conduct similar to conduct that is prohibited under 45-5-202,  
27 45-5-213, or this section; or

28 ~~(vi)~~(vii) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this  
29 state or in another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

30 (4) (a) An offender convicted of partner or family member assault is required to pay for and complete a

1 counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency.  
2 An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender  
3 intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the  
4 offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure  
5 the confidentiality of the report. If the report contains confidential information relating to the victim's location or  
6 not related to the charged offense, that information must be deleted from the report prior to being sent to the  
7 offender intervention program.

8 (b) The offender shall complete all recommendations for counseling, referrals, attendance at  
9 psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the  
10 counseling provider. The counseling provider must be approved by the court. The counseling must include a  
11 preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40  
12 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in  
13 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender  
14 accountable for the offender's violent or controlling behavior must be:

- 15 (i) with a person licensed under Title 37, chapter 17, 22, or 23;  
16 (ii) with a professional person as defined in 53-21-102; or  
17 (iii) in a specialized domestic violence intervention program.

18 (c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b)  
19 must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment  
20 may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit  
21 the placement of the offender in other appropriate treatment if the court determines that there is no available  
22 treatment program directed to the violent or controlling conduct of the offender.

23 (5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial  
24 resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require  
25 the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

26 (6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to  
27 pay for the costs of the offender's probation, if probation is ordered by the court.

28 (7) The court may prohibit an offender convicted under this section from possession or use of the firearm  
29 used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

30 (8) The court shall provide an offender with a written copy of the offender's sentence at the time of

1 sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

2

3 **Section 7.** Section 45-5-209, MCA, is amended to read:

4 **"45-5-209. Partner or family member assault -- no contact order -- notice -- violation of order --**  
 5 **penalty.** (1) A court may issue a standing no contact order and direct law enforcement to serve the order on a  
 6 defendant charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member of the  
 7 defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1]. The court order may specify conditions necessary  
 8 to enhance the safety of any protected person. The court-ordered conditions may include prohibiting the  
 9 defendant from contacting the protected person in person, by a third party, by telephone, by electronic  
 10 communication, as defined in 45-8-213, and in writing. The court may impose up to a 1,500-foot restriction on  
 11 the defendant to stay away from the protected person's location.

12 (2) Notice of the no contact order must be given orally and in writing by a peace officer at the time that  
 13 the offender is charged with or arrested for a violation of 45-5-206 or, if the victim is a partner or family member  
 14 of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1]. One copy of the order must be given to the  
 15 defendant, and one copy must be filed with the court.

16 (3) The charge of a violation of 45-5-206 or, if the victim is a partner or family member of the defendant,  
 17 a violation of 45-5-202, ~~or~~ 45-5-213, or [section 1] must be supported by a peace officer's affidavit of probable  
 18 cause.

19 (4) The no contact order issued at the time that the defendant is charged with or arrested for a violation  
 20 of 45-5-206 or, if the victim is a partner or family member of the defendant, a violation of 45-5-202, ~~or~~ 45-5-213,  
 21 or [section 1] is effective for 72 hours or until the defendant makes the first appearance in court.

22 (5) The court order must state:

23 "You have been charged with or arrested for an assault on a partner or family member. You are not  
 24 allowed to have contact with \_\_\_\_\_  
 25 (list names). You may not \_\_\_\_\_. Violation of this no contact order is a  
 26 criminal offense under 45-5-209, MCA, and may result in your arrest. You may be arrested even if the person  
 27 protected by the no contact order invites or allows you to violate the prohibitions. This order lasts 72 hours or until  
 28 the court continues or changes the order."

29 (6) The court shall review and amend, if appropriate, the no contact order at the defendant's first  
 30 appearance.

1 (7) A no contact order may be issued by a court with jurisdiction over violations of 45-5-206 or, if the  
2 victim is a partner or family member of the defendant, violations of 45-5-202, ~~or 45-5-213,~~ or [section 1] at the time  
3 of the defendant's arraignment or at any other appearance of the defendant, including sentencing. The no contact  
4 order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the  
5 court. The court order shall specify protected persons and prohibited contact, including but not limited to the  
6 restriction mentioned in subsection (1).

7 (8) (a) A person commits the offense of violation of a no contact order if the person, with knowledge of  
8 the order, purposely or knowingly violates any provision of any order issued under this section.

9 (b) Each contact or attempt to make contact with each protected person, directly or indirectly, is a  
10 separate offense. Consent of the protected person to prohibited contact is not a defense. A protected person may  
11 not be charged with a violation of a no contact order.

12 (c) An offender convicted of violation of a no contact order shall be fined an amount not to exceed \$500  
13 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

14 (9) As used in this section, the following definitions apply:

15 (a) "No contact order" means a court order that prohibits a defendant charged with or convicted of an  
16 assault on a partner or family member from contacting a protected person.

17 (b) "Partner" or "family member" has the meaning provided in 45-5-206.

18 (c) "Protected person" means a victim of a partner or family member assault listed in a no contact order."  
19

20 **Section 8.** Section 46-1-502, MCA, is amended to read:

21 **"46-1-502. Mediation.** (1) At any time after the commencement of a prosecution and before the verdict,  
22 the court may, at its suggestion or upon motion of a party and with the consent of all the parties, refer the  
23 proceeding to mediation by a mediator chosen by the court.

24 (2) The proceeding may not be referred for mediation if the offense charged is:

25 (a) deliberate homicide, as described in 45-5-102;

26 (b) mitigated deliberate homicide, as described in 45-5-103;

27 (c) intimidation, as described in 45-5-203;

28 (d) partner or family member assault, as described in 45-5-206;

29 (e) assault on a minor, as described in 45-5-212;

30 (f) strangulation of a partner or family member, as described in [section 1];

- 1           ~~(f)~~(g) stalking, as described in 45-5-220;
- 2           ~~(g)~~(h) aggravated kidnapping, as described in 45-5-303;
- 3           ~~(h)~~(i) a sex crime, as described in 45-5-502, 45-5-503, 45-5-504, or 45-5-507;
- 4           ~~(i)~~(j) endangering the welfare of children, as described in 45-5-622;
- 5           ~~(j)~~(k) sexual abuse of children, as described in 45-5-625; or
- 6           ~~(k)~~(l) ritual abuse of a minor, as described in 45-5-627.

7           (3) Any aspect of or issue in the proceeding may be the subject of the mediation, including but not limited

8 to the charge, a plea bargain, or a recommended sentence.

9           (4) At any point during mediation, a party may withdraw from the mediation without penalty or sanction.

10          (5) This section does not prohibit the parties from engaging in traditional plea negotiations."

11

12          **Section 9.** Section 46-6-311, MCA, is amended to read:

13          **"46-6-311. Basis for arrest without warrant -- arrest of predominant aggressor -- no contact order.**

14          (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to

15 believe that the person is committing an offense or that the person has committed an offense and existing

16 circumstances require immediate arrest.

17          (2) (a) The summoning of a peace officer to a place of residence by a partner or family member

18 constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family

19 member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining

20 order, or other imminent danger to the victim.

21          (b) When a peace officer responds to a partner or family member assault complaint and if it appears that

22 the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the

23 predominant aggressor. If, based on the officer's evaluation, the officer determines that one person is the

24 predominant aggressor, the officer may arrest only the predominant aggressor. A determination of who the

25 predominant aggressor is must be based on but is not limited to the following considerations, regardless of who

26 was the first aggressor:

27               (i) the prior history of violence between the partners or family members, if information about the prior

28 history is available to the officer;

29               (ii) the relative severity of injuries received by each person;

30               (iii) whether an act of or threat of violence was taken in self-defense;

- 1 (iv) the relative sizes and apparent strength of each person;  
 2 (v) the apparent fear or lack of fear between the partners or family members; and  
 3 (vi) statements made by witnesses.

4 (3) If a judge has issued a standing order as provided in 45-5-209, a peace officer shall give a defendant  
 5 charged with or arrested for partner or family member assault or a violation of 45-5-202, ~~or~~ 45-5-213, or [section  
 6 1] if the victim is a partner or family member of the defendant, both written and verbal notice of the no contact  
 7 order issued pursuant to 45-5-209. The notice must include specific conditions as ordered by the court."  
 8

9 **Section 10.** Section 46-9-108, MCA, is amended to read:

10 **"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release.** (1) The  
 11 court may impose any condition that will reasonably ensure the appearance of the defendant as required or that  
 12 will ensure the safety of any person or the community, including but not limited to the following conditions:

- 13 (a) the defendant may not commit an offense during the period of release;  
 14 (b) the defendant shall remain in the custody of a designated person who agrees to supervise the  
 15 defendant and report any violation of a release condition to the court, if the designated person is reasonably able  
 16 to assure the court that the defendant will appear as required and will not pose a danger to the safety of any  
 17 person or the community;  
 18 (c) the defendant shall maintain employment or, if unemployed, actively seek employment;  
 19 (d) the defendant shall abide by specified restrictions on the defendant's personal associations, place  
 20 of abode, and travel;  
 21 (e) the defendant shall avoid all contact with:  
 22 (i) an alleged victim of the crime, including in a case of partner or family member assault or strangulation  
 23 of a partner or family member the restrictions contained in a no contact order issued under 45-5-209; and  
 24 (ii) any potential witness who may testify concerning the offense;  
 25 (f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services  
 26 agency, or other appropriate individual;  
 27 (g) the defendant shall comply with a specified curfew;  
 28 (h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;  
 29 (i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other  
 30 controlled substance without a legal prescription;

1 (j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment  
2 program, or both;

3 (k) the defendant shall furnish bail in accordance with 46-9-401; or

4 (l) the defendant shall return to custody for specified hours following release from employment,  
5 schooling, or other approved purposes.

6 (2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant  
7 and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the  
8 defendant's appearance and provide for protection of any person or the community. At any time, the court may,  
9 upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own  
10 motion or upon the motion of either party.

11 (3) Whenever a person accused of a violation of 45-5-206, [section 1], 45-5-220, or 45-5-626 is admitted  
12 to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more  
13 reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if  
14 the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."  
15

16 **Section 11.** Section 46-9-302, MCA, is amended to read:

17 **"46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a  
18 schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail  
19 without first appearing before the judge when the offense is:

20 (a) any assault on a partner or family member, as partner or family member is defined in 45-5-206;

21 (b) strangulation of a partner or family member, as defined in [section 1];

22 ~~(b)~~(c) stalking, as defined in 45-5-220;

23 ~~(c)~~(d) violation of an order of protection, as defined in 45-5-626; or

24 ~~(d)~~(e) violation of a no contact order, as defined in 45-5-209.

25 (2) A peace officer may:

26 (a) accept bail on behalf of a judge:

27 (i) in accordance with the bail schedule established under subsection (1); or

28 (ii) whenever the warrant of arrest specifies the amount of bail; or

29 (b) with the offender's permission, accept an unexpired driver's license in lieu of bail for a violation of any  
30 offense in Title 61, chapters 3 through 10, except chapter 8, part 4, as provided in subsection (4).

1 (3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting  
2 forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to  
3 appear, and the judge shall give a receipt to the peace officer for the bail delivered.

4 (4) Whenever a peace officer accepts an unexpired driver's license in lieu of bail, the peace officer shall  
5 give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge  
6 the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit  
7 authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is  
8 signed and remains in effect through the date of the appearance listed on the permit. The peace officer shall  
9 deliver the driver's license to the judge before whom the offender is to appear, and the judge shall give the peace  
10 officer a receipt acknowledging delivery of the offender's driver's license to the court. After the filing of the  
11 complaint and the appearance of the defendant, the judge shall assume jurisdiction and may extend the date of  
12 the driving permit for a period of up to 6 months from the defendant's initial appearance date.

13 (5) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant:  
14 (a) after the required bail has been posted or there has been a final determination of the charge; and  
15 (b) if the defendant pleaded guilty or was convicted, after a \$25 administrative fee has been paid to the  
16 court."

17

18 **Section 12.** Section 46-16-226, MCA, is amended to read:

19 **"46-16-226. Definitions.** As used in 46-16-226 through 46-16-229, the following definitions apply:

20 (1) "Child witness" means an individual who is:

21 (a) 13 years of age or younger at the time the individual is called as a witness in a criminal proceeding  
22 involving a sexual or violent offense; or

23 (b) under 16 years of age at the time that the individual is called as a witness in a criminal proceeding  
24 involving a sexual or violent offense and who is an individual with a developmental disability, as defined in  
25 53-20-102.

26 (2) "Sexual offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation  
27 of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-603, or 45-5-625.

28 (3) "Violent offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation  
29 of 45-5-102, 45-5-103, 45-5-202, 45-5-206, 45-5-210, 45-5-212, 45-5-213, [section 1], 45-5-302, 45-5-303,  
30 45-5-401, 45-6-103, or 45-9-132."

1  
 2           **Section 13.** Section 46-18-219, MCA, is amended to read:  
 3           **"46-18-219. Life sentence without possibility of release.** (1) (a) Except as provided in subsection (3),  
 4 if an offender convicted of one of the following offenses was previously convicted of one of the following offenses  
 5 or of an offense under the laws of another state or of the United States that, if committed in this state, would be  
 6 one of the following offenses, the offender must be sentenced to life in prison, unless the death penalty is  
 7 applicable and imposed:

- 8           (i) 45-5-102, deliberate homicide;  
 9           (ii) 45-5-303, aggravated kidnapping;  
 10          (iii) 45-5-503, sexual intercourse without consent;  
 11          (iv) 45-5-625, sexual abuse of children; or  
 12          (v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

13          (b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was  
 14 previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection  
 15 (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that,  
 16 if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender  
 17 must be sentenced to life in prison, unless the death penalty is applicable and imposed:

- 18          (i) 45-5-103, mitigated deliberate homicide;  
 19          (ii) 45-5-202, aggravated assault;  
 20          (iii) [section 1]. strangulation of a partner or family member;  
 21          ~~(iii)~~(iv) 45-5-302, kidnapping;  
 22          ~~(iv)~~(v) 45-5-401, robbery; or  
 23          ~~(v)~~(vi) 45-5-603, aggravated promotion of prostitution.

24          (2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under  
 25 subsection (1):

- 26          (a) shall serve the entire sentence;  
 27          (b) shall serve the sentence in prison;  
 28          (c) may not for any reason, except a medical reason, be transferred for any length of time to another type  
 29 of institution, facility, or program;  
 30          (d) may not be paroled; and

1 (e) may not be given time off for good behavior or otherwise be given an early release for any reason.

2 (3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1),  
3 pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section  
4 do not apply to the offender's present sentence.

5 (4) The imposition or execution of the sentences prescribed by this section may not be deferred or  
6 suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this  
7 section prevails.

8 (5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are  
9 locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private  
10 contractor.

11 (b) Prison does not include a work release center, prerelease center, boot camp, or any other type of  
12 facility that does not provide secure detention."  
13

14 **Section 14.** Section 46-23-502, MCA, is amended to read:

15 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

16 (1) "Department" means the department of corrections provided for in 2-15-2301.

17 (2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,  
18 or volitional capacity of a person in a manner that predisposes the person to the commission of one or more  
19 sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

20 (3) "Municipality" means an entity that has incorporated as a city or town.

21 (4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic  
22 and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

23 (5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person  
24 with whom a relationship has been established or furthered for the primary purpose of victimization.

25 (6) "Registration agency" means:

26 (a) if the offender resides in a municipality, the police department of that municipality; or

27 (b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which  
28 the offender resides.

29 (7) (a) "Residence" means the location at which a person regularly resides, regardless of the number  
30 of days or nights spent at that location, that can be located by a street address, including a house, apartment

1 building, motel, hotel, or recreational or other vehicle.

2 (b) The term does not mean a homeless shelter.

3 (8) "Sexual offender evaluator" means a person qualified under rules established by the department to  
4 conduct psychosexual evaluations of sexual offenders and sexually violent predators.

5 (9) "Sexual offense" means:

6 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim  
7 is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18  
8 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and  
9 the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and  
10 commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental  
11 condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is  
12 3 or more years older than the victim), 45-5-503, 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years  
13 of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of  
14 age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and  
15 the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or  
16 (2)(b), 45-5-625, 45-5-704, or 45-5-705; or

17 (b) any violation of a law of another state, a tribal government, or the federal government that is  
18 reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register  
19 as a sexual offender after an adjudication or conviction.

20 (10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to  
21 have committed or been adjudicated for a sexual or violent offense.

22 (11) "Sexually violent predator" means a person who:

23 (a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual  
24 offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to  
25 engage in predatory sexual offenses; or

26 (b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender  
27 is 18 years of age or older.

28 (12) "Transient" means an offender who has no residence.

29 (13) "Violent offense" means:

30 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,

1 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, section  
2 1, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132;  
3 or

4 (b) any violation of a law of another state, a tribal government, or the federal government reasonably  
5 equivalent to a violation listed in subsection (13)(a)."

6  
7 NEW SECTION. Section 15. Codification instruction. [Section 1] is intended to be codified as an  
8 integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [section 1].

9  
10 NEW SECTION. Section 16. Effective date. [This act] is effective on passage and approval.

11 - END -